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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

JENNY LISETTE FLORES, *et al.*,

) Case No. CV 85-4544 DMG (AGR<sub>x</sub>)<sup>L</sup><sub>SEP</sub>

Plaintiffs,

1

WILLIAM P. BARR, ATTORNEY GENERAL  
OF THE UNITED STATES, *et al.*

## SUPPLEMENTAL APPLICATION FOR

) SUPPLEMENTAL APPLICATION FOR  
) LEAVE TO FILE CORRECTED POINTS AND  
) AUTHORITIES IN SUPPORT OF MOTION TO  
) ENFORCE SETTLEMENT AND EXHIBIT 10  
) UNDER SEAL

## Defendants.

[HON. DOLLY M. GEE]

1

1       *Plaintiffs' counsel, continued:*

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1 Plaintiffs hereby file this supplemental application seeking an Order permitting  
2 the filing of Plaintiffs' Corrected Points and Authorities in Support of Motion to  
3 Enforce Settlement Agreement and Corrected Plaintiffs' Exhibit 10, with the names of  
4 class member asylum seekers and the name of the deponent in Exhibit 10 under seal.

5  
6 On May 31, 2019, Plaintiffs filed an Application to File Motion to Enforce  
7 Settlement and Exhibits Under Seal [Doc. # 547].  
8

9 On May 31, 2019, the Court issued an In Chambers Minute Order [Doc. # 549],  
10 which stated in part that Plaintiffs offered no justification for their request to seal  
11 information concerning the "identities of certain Government employees, the name of a  
12 shorthand reporter and notary public, the name of a psychiatrist, and the location of a  
13 government employee's base of operations. The Court ordered Plaintiffs to do one of  
14 the following:  
15

16

- 17 1. File under seal for the Court's review new unredacted versions of the  
18 documents in question that do not have proposed redactions for items (b), (c),  
19 (d), and (e) highlighted therein, along with proposed redacted versions of  
20 those documents in which such corresponding redactions have been removed  
21 (the latter of which shall be filed on the public docket). These filings shall be  
22 accompanied by a supplement to the Application and a sealed supplement to  
23 Plaintiffs' counsel's declaration that discloses whether (and to what extent)  
24 Defendants consent to Plaintiffs' supplemented Application;

1           2. File on the public docket a supplement to the Application that concisely  
2           explains why items (b), (c), (d), and (e) should be redacted, along with a  
3           supplemental declaration in support thereof that shall be filed under seal.  
4  
5           These supplemental filings shall disclose whether (and to what extent)  
6           Defendants consent to Plaintiffs' original Application; or  
7  
8           3. Elect a combination of options 1. and 2., with the proposed redactions  
9           removed from matter that Plaintiffs concede should not be sealed.

10           *Id.*

11           The only redactions at issue are found in Exhibit 10, a deposition of a federal  
12           employee taken in *Lucas R. v. Azar*, 2:18-CV-05741 DMG PLA (C.D. Cal.)

14           **A. Withdrawn redactions.**

15           The parties agree that the names of the shorthand reporter and notary public,  
16           psychiatrist attending the deposition, and the location of federal employee's base of  
17           operations need not be redacted. Plaintiffs withdraw and no longer request that these  
18           items be redacted.

21           **B. Redaction of "(b) information concerning the identities of certain  
22           Government employees."**

23           The government's position as to the proposed redactions in Exhibit 10, a  
24           deposition transcript of a federal employee, is as follows:

25           The Court's May 31, 2019 order in *Flores* pertaining to "information  
26  
27           concerning the 'identities of certain Government employees' is covered  
28

1 under paragraph 5 of the *Lucas R.* protective order, which defines  
2 ‘Confidential Personal Information’ as ‘personal identifiable information’  
3 for ‘third parties, non-supervisory federal and non-federal employees,  
4 including names and contact information ... Paragraph 12 of the *Lucas R.*  
5 protective order provides that “all Confidential Personal Information  
6 produced or exchanged pursuant to this Protective Order **shall be used solely**  
7 **for the purposes of litigating or resolving this action and for no other**  
8 **purpose whatsoever** and shall not be disclosed, disseminated, or transmitted  
9 to any person, entity, or organization except in accordance with the terms of  
10 this Protective Order.” (emphasis added). Using evidence collected in *Lucas*  
11 *R.* that the *Flores* plaintiffs would not otherwise be entitled to obtain under  
12 *Flores* does not comport with the spirit or the letter of the *Lucas R.*  
13 protective order. We therefore and respectfully object to the *Flores*  
14 plaintiffs’ proposal to use that evidence outside of the *Lucas R.* case in  
15 general and in *Flores* in particular.

16 If, however, the Court concludes that using evidence collected in and subject  
17 to the protective order in *Lucas R.* is nevertheless appropriate in *Flores*, the  
18 *Lucas R.* official-capacity defendants state as follows concerning what  
19 redactions may be required under the *Lucas R.* protective order. Under the  
20 *Lucas R.* protective order, concerning: (1) [Deponent]: Her name and title  
21 should be redacted under the *Lucas R.* protective order, as she is not a  
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supervisory employee. (2) Jill Volovar and James de la Cruz: As we understand these employees to have supervisory duties, we do not read the *Lucas R.* protective order as requiring redaction. (3) [Six names of employees] and any other federal employees or contractors referenced in [Deponent's] deposition: their names and titles should be redacted under the *Lucas R.* protective order, as upon our initial understanding these people are either non-supervisory federal or non-federal employees....

*See Supplemental Declaration of Peter Schey (“Supp. Schey Decl.”), ¶ 4. See also Supp. Schey Decl, Exhibit 1 (March 12, 2019, Stipulated Protective Order, *Lucas R. v. Azar*, CV 2:18-CV-05741 (CD Cal.) (“Lucas R. Stipulated Protective Order”).*

## 1. Deposition Testimony in *Lucas R.* May Be Relied in this case

The Defendants in this case have seemingly taken no position, instead relying on the Defendants in *Lucas R.* to provide their position. The *Lucas R.* Defendants are incorrect that the *Lucas R.* Stipulated Protective Order bars the use of deposition testimony in *Lucas R.* in this case. The *Lucas R.* Stipulated Protective Order covers “Confidential Personal Information” which includes “personally identifiable information and states “all Confidential Personal Information” produced pursuant to the Protective Order “shall be used solely for the purposes of litigating or resolving this action and for no other purpose whatsoever....” Stipulated Protective Order at ¶ 12.

The deponent's *testimony* is not "personally identifiable information" and therefore is not confidential as defined in the Stipulated Protective Order.

1 Moreover, the Stipulated Protective Order includes the procedure to follow in  
2 the event any *Lucas R.* party believes any deposition testimony in that case includes  
3 “Confidential Personal Information”:

5 Confidential Personal Information contained in any statement made  
6 during an oral deposition may be designated as “Confidential” either  
7 through a statement made on the record, or by serving written notice of  
8 the page and line of the confidential deposition portions ... If such  
9 designations are made through written notice, they shall be made within  
10 twenty (20) days of receiving the final transcript. Until the aforesaid  
11 period to designate the deposition has passed, the entire transcript shall  
12 be deemed Confidential Personal Information under the terms of this  
13 Protective Order.

17 *Lucas R.* Stipulated Protective Order, ¶ 6(c). Defendants do *not* claim that these  
18 procedures were followed with regard to any of the testimony relied upon in Plaintiffs’  
19 pending Motion to Enforce. Defendants’ effort to block use of the deposition in this  
20 case is not supported by the plain terms of the Protective Order.

22 **2. Redaction of Names in the Deposition**

24 Inasmuch as the *Lucas R.* Defendants state that Jill Volovar and James de la  
25 Cruz are supervisory federal employees, the Corrected Exhibit 10 filed herewith  
26 includes their unredacted names and titles.

1 Because Plaintiffs have insufficient information to determine whether the six  
2 employees referenced by the deponent at pages 11, 17, 19, 58, 123, 169, and 183 of the  
3 deposition are in fact non-supervisory employees, Plaintiffs have simply extracted  
4 those pages from Exhibit 10. Those pages are not cited to or relied upon in the pending  
5 Motion to Enforce. Those names are no longer part of Corrected Exhibit 10. *See* Supp.  
6 Schey Dec., ¶ 7.  
7

8 This leaves the name and title of the deponent. Plaintiffs do not have sufficient  
9 information to dispute Defendants' assertion that the deponent is a non-supervisory  
10 employee. Out of an abundance of caution, Plaintiffs do not object to redacting her  
11 name and title from Corrected Exhibit 10 and the Corrected Points and Authorities in  
12 Support of Motion to Enforce, filed concurrently herewith. Accordingly, the Corrected  
13 Points and Authorities and Exhibit 10 submitted herewith redact the deponent's name  
14 and title. *Id.*

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1 A proposed Order granting this supplemental application is lodged herewith.  
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3 Dated: June 14, 2019

Respectfully submitted,

4 CENTER FOR HUMAN RIGHTS &  
5 CONSTITUTIONAL LAW  
6 Peter A. Schey  
Carlos Holguín

7 ORRICK, HERRINGTON & SUTCLIFFE LLP  
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19 Holly S. Cooper

20  
21 */s/Peter Schey*  
22 *Attorneys for Plaintiffs*  
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1 CERTIFICATE OF SERVICE  
2

3 I, Peter Schey, declare and say as follows:

4 I am over the age of eighteen years of age and am a party to this action. I am  
5 employed in the County of Los Angeles, State of California. My business address is  
6  
7 256 S. Occidental Blvd., Los Angeles, CA 90057, in said county and state. [REDACTED]  
8 SEP

9 On June 14, 2019, I electronically filed the following document(s):  
10

11 SUPPLEMENTAL APPLICATION FOR LEAVE TO FILE CORRECTED POINTS AND  
12 AUTHORITIES IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT AND EXHIBIT 10 UNDER  
13 SEAL

14 with the United States District Court, Central District of California by using the  
15 CM/ECF system. Participants in the case who are registered CM/ECF users will be  
16 served by the CM/ECF system.

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/s/Peter Schey  
Attorney for Plaintiffs